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Letter dated 21 November 2011 from the Chair of the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities addressed to the President of the Security Council

I have the honour to transmit herewith the report of the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities presenting its position on the recommendations contained in the eleventh report of the Analytical Support and Sanctions Monitoring Team (S/2011/245) (see annex).

I should be grateful if the present letter and its annex could be brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Peter **Wittig**
Chair
Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities

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Recommendations contained in the eleventh report of the Analytical Support and Sanctions Monitoring Team: position of the Committee

I. Introduction

1. On 22 February 2011, the Analytical Support and Sanctions Monitoring Team submitted its eleventh report (S/2011/245) to the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities.[1] The Chair of the Committee transmitted the report to the President of the Security Council on 13 April 2011 (S/2011/245).

2. In response to each of the eight reports that the Monitoring Team has submitted to it since December 2005, the Committee has brought to the attention of the Security Council the Committee's position on a number of the recommendations contained therein.

3. The recommendations contained in the eleventh report of the Monitoring Team were submitted prior to the adoption of Security Council resolutions 1988 (2011) and 1989 (2011), which, inter alia, changed the scope and mandate of the Committee and established a new Committee pursuant to resolution 1988 (2011) to oversee the relevant measures and a new sanctions list comprising individuals, groups, undertakings and entities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan.

4. In the present position paper, therefore, the recommendations addressed are referred to in the light of the changes brought about by the adoption of resolutions 1988 (2011) and 1989 (2011). It should also be noted that some of the recommendations contained in the eleventh report of the Monitoring Team go beyond the current competence of the Al-Qaida sanctions Committee and, in such cases, the Committee has limited its positions to factual citations to the same resolutions, by which its mandate was modified.

5. The present position paper aims to draw attention to those recommendations made by the Monitoring Team that the Committee found to be of particular importance and relevance to its current and future work. The Committee welcomes the continued efforts of the Monitoring Team to identify ways to improve the implementation and the effectiveness of the sanctions measures, and it is of the opinion that all Member States should be made aware of, and take into account, the Monitoring Team's recommendations. The Committee also wishes to note that a number of the recommendations were of relevance to the Security Council itself, particularly during the period prior to the adoption of resolutions 1988 (2011) and 1989 (2011) on 17 June 2011.

[1] On 30 June 2011, the Security Council decided to revise the name of the Committee to: Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities (see S/2011/2/Rev.2).

II. The Al-Qaida Sanctions List and the 1988 sanctions list

Drawing a line between the Taliban and Al-Qaida sections of the Consolidated List (para. 16)

6. The Committee recalls that the Security Council, in its resolution 1988 (2011), indicated that it had considered the Committee's deliberations on the recommendation of the Monitoring Team in its eleventh report that Member States treat listed Taliban and listed individuals and entities of Al-Qaida and its affiliates differently in promoting peace and stability in Afghanistan. As a result of the adoption of the same resolution, the Taliban and Al-Qaida sections, as previously reflected on the Consolidated List, have been separated. At the same time, the Security Council, in both resolution 1988 (2011) and resolution 1989 (2011), requested the Monitoring Team to submit to the Committee within 90 days after the adoption of the same resolutions a written report and recommendations on linkages between Al-Qaida and those individuals, groups, undertakings or entities eligible for designation under paragraph 1 of resolution 1988 (2011), with a particular focus on entries that appear on both the Al-Qaida Sanctions List and the 1988 sanctions list, and thereafter to submit such a report and recommendations periodically (Security Council resolution 1988 (2011), annex, para. (u), and Security Council resolution 1989 (2011), annex I, para. (aa)). The Committee, recognizing that there are in some cases linkages between Al-Qaida and the Taliban, will continue to consider in a comprehensive manner questions related to those linkages.

Strengthening the Committee's interaction with Afghanistan (para. 21)

7. The Committee recalls that the Security Council welcomed, in paragraph 29 of resolution 1988 (2011), the Government of Afghanistan's desire to assist the 1988 sanctions Committee in the coordination of listing and delisting requests and in the submission of all relevant information to the Committee. The Committee further recalls that in paragraph 16 of resolution 1988 (2011) the Security Council called upon Member States, when considering the proposal of a new designation, to consult the Government of Afghanistan on the designation prior to submission to the Committee, where appropriate. Similarly, in paragraph 19 of the same resolution the Council called upon Member States to coordinate their delisting requests, as appropriate, with the Government of Afghanistan to ensure coordination with the peace and reconciliation efforts of the Government of Afghanistan.

Role of the Monitoring Team in providing a link between discussions in Afghanistan and United Nations Headquarters (para. 22)

8. The Committee notes that the Security Council, in paragraph (m) of the annex to resolution 1988 (2011), accorded the Monitoring Team the responsibility to consult with Member States and other relevant organizations and bodies, including the United Nations Assistance Mission in Afghanistan, and engage in regular dialogue with representatives in New York and in capitals, taking into account their comments.

Tools to facilitate Committee consideration of delisting requests from the Government of Afghanistan (para. 23)

9. The Committee recalls that on 24 May 2011, prior to the adoption of resolutions 1988 (2011) and 1989 (2011), it had requested the Monitoring Team to prepare a modalities paper to further consider the tools, such as a checklist, that could be used by the Committee to streamline its consideration of delisting requests from the Government of Afghanistan. In accordance with paragraph 3 of resolution 1989 (2011), the Committee transmitted responsibility for any appropriate follow-up on this request to the Committee established pursuant to resolution 1988 (2011).

New format for the Consolidated List (para. 25)

10. The Committee welcomes the efforts by the Monitoring Team to interact closely with various list providers and the private financial sector in the development of a new format for the Consolidated List. The Committee shares the view that United Nations sanctions lists should be harmonized in the interest of greater coherence and consistency across the United Nations system.

III. Implementation of the sanctions

Moving beyond resolution 1904 (2009)

The Ombudsperson's ability to recommend delisting or to support continued listing (para. 37)

11. The Committee recalls the enhanced Ombudsperson procedure agreed in paragraphs 21 to 23 of resolution 1989 (2011). The Committee notes that the Ombudsperson is now mandated to make recommendations to the Committee and that a recommendation to delist triggers delisting, unless all Committee members object to the recommendation or the issue is referred to the Security Council. This has further enhanced the provision of clear and fair procedures.

Increasing the transparency of the Committee's dealings with the Office of the Ombudsperson (para. 38)

12. The Committee agrees on the importance of transparency. If, and in what form, the reports of the Ombudsperson should be made publicly accessible requires further careful consideration. The Committee recalls that it has undertaken other initiatives to enhance the transparency of the regime. For example, it has written to the Ombudsperson setting out its considerations on each delisting case, and the Ombudsperson has passed this information on to the relevant petitioner.

The Ombudsperson process and legal challenges in national or regional courts (para. 43)

13. The Committee recalls that, in paragraph 26 of resolution 1989 (2011), the Security Council requested that Member States and relevant international organizations and bodies encourage individuals and entities that are considering challenging or are already in the process of challenging their listing through national and regional courts to seek removal from the Al-Qaida Sanctions List by submitting delisting petitions through the Office of the Ombudsperson.

The role of Member States

Inviting States to meetings of the Committee (para. 44)

14. The Committee endorses the Monitoring Team's recommendation to give States that support a listing or delisting an opportunity to appear before the Committee to discuss the case and thus allow the Committee to take a more informed decision. The Committee, where appropriate, will also consider extending invitations to attend meetings not only to designating States and States of nationality and of residence, but also to other relevant States identified by the Committee.

Obtaining information on ongoing legal investigations (para. 45)

15. The Committee recalls that the Security Council, in paragraph 17 of resolution 1989 (2011), encouraged Member States and relevant international organizations and bodies to inform the Committee of any relevant court decisions and proceedings so that the Committee can consider them when it reviews a corresponding listing or updates a narrative summary of reasons for listing.

Consultations with national judicial bodies to reaffirm the case for listing at the time of the periodic review (para. 46)

16. The Committee notes that the Security Council, in paragraph 50 of resolution 1989 (2011), encouraged designating States to inform the Monitoring Team whether any national court or other legal authority has reviewed an individual's case and whether any judicial proceedings have begun, and to include any other relevant information when submitting the standard form for listing. The Committee also encouraged designating States to reaffirm the case for listing at the time of the triennial review described in paragraph 40 of resolution 1989 (2011), or to submit a delisting request, without prejudice to the Committee's decision to maintain or remove the listing.

IV. Assets freeze

Research on the size and scope of non-profit organizations (para. 53)

17. The Committee took note of the Monitoring Team's recommendation regarding safeguards that can help Member States to reduce the risk of Al-Qaida and Taliban financiers using non-profit organizations for terrorist purposes, and will continue to study the recommendation.

Review of resolution 1452 (2002) (para. 57)

18. The Committee supports the recommendation that the Security Council consider the reform of resolution 1452 (2002) with a view to improving its procedures and giving more authority to Member States. In this connection, the Committee notes that the Security Council, in paragraph 57 of resolution 1989 (2011), directed the Monitoring Team to review the Committee's procedures for granting exemptions pursuant to resolution 1452 (2002) and to provide recommendations for how the Committee can improve the process for granting such exemptions.

V. Travel ban

Technical assistance to improve implementation of the travel ban (para. 60)

19. The Committee encourages States and relevant international organizations to provide all possible relevant assistance in the area of border control and sanctions implementation in general to those States that need it. The Committee recognizes that such assistance could be provided bilaterally, as well as through a range of organizations, such as, inter alia, the International Criminal Police Organization (INTERPOL), the International Organization for Migration, the World Customs Organization and the International Civil Aviation Organization, among others. The Committee will also undertake to explore areas for possible cooperation with other Security Council Committees in this field to search for synergies in assisting Member States to enhance their implementation of the travel ban.

Travel ban exemption procedure (para. 61)

20. The Committee endorses the proposal by the Monitoring Team that the Team consult Member States on the available procedures to request exemptions from the travel ban measure, with a view to determining the likely amount of cross-border travel by listed parties, and how it could be controlled more efficiently.

Application of the travel ban (para. 63)

21. The Committee encourages Member States to make early contact with the secretariat of the Committee on any issue concerning the application of the travel ban or any other sanctions measure in specific cases. The Committee intends to further consider the specific tools that can be employed to raise awareness of the scope and limits of the travel ban.

VI. Arms embargo

Preventing the use of the Internet for explosives instruction (para. 71)

22. The Committee takes note of the Monitoring Team's recommendation regarding the sanctions regime and preventing the use of the Internet for direct or indirect supply, sale or transfer of technical advice, assistance or training related to military activities, and will continue to study the recommendation.

VII. Conclusion

23. The Committee would like to thank the Monitoring Team for its eleventh report and the valuable recommendations contained therein. The Committee would like to underline the special importance of these recommendations, many of which were considered and incorporated into resolutions 1988 (2011) and 1989 (2011).